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**7535-01-U**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Part 701**

#### **Loans to Members and Lines of Credit to Members.**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is amending three subsections of its lending rule and this final rule clarifies: the conditions for applying the rule to loans secured by mobile homes, recreational vehicles, house trailers and boats; that loans secured by manufactured homes may be considered residential real estate loans; and that loans with a partial government guarantee, insurance, or advance commitment to purchase a portion of a loan fall within the rule. The changes incorporate legal interpretations previously issued

by its Office of General Counsel (OGC) regarding permissible maturities for certain types of loans and the effect of partial government guarantees. The NCUA Board is making these changes because it believes it is helpful to federal credit unions (FCUs) and others that may consult NCUA regulations to incorporate these interpretations as part of the rule itself rather than having them stated separately in OGC legal opinions.

**EFFECTIVE DATE:** This rule is effective [Insert date thirty days following publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Federal Credit Union Act (the FCU Act) generally limits an FCU's authority on matters of loan maturity, rates of interest, security and prepayment penalties. 12 U.S.C. 1757(5). As permitted under the FCU Act, the NCUA Board (the Board) has promulgated lending regulations allowing loan maturities of 20 years for mobile home loans and up to 40 years, or more with specific Board approval, on residential real

estate loans. 12 CFR §701.21(f) and (g). NCUA's lending regulations also address loans secured by a state or federal government insurance or guarantee.

12 CFR §701.21(e). The OGC had recently issued several legal opinions addressing loan guarantees and loan maturities. In the course of the agency's annual review of regulations, the Board determined that the rules on loan guarantees and maturities should be updated to reflect the OGC opinions. Accordingly, on November 18, 2004, the Board issued a proposal to amend the lending regulations to incorporate the recent OGC opinions. 69 FR 68829, Nov. 26, 2004.

### **Summary of Comments**

NCUA received eleven comments: five from state credit union leagues, two from national credit union trade organizations, three from individual credit unions, and one from a banking trade association. The comments were generally positive and supported the proposal to amend the regulation.

All of the comments that specifically addressed the proposed changes to §701.21(e) of the rule regarding loan guarantees were favorable and supported the change. The final amendment to the rule, which is unchanged from the proposed, clarifies that a partial government guarantee, insurance, or commitment to purchase a loan is sufficient to effect the application of the regulation.

The majority of comments supported the proposed changes to §701.21(f) and (g) regarding loan maturities for mobile homes, recreational vehicles and boats, and loan maturities for manufactured homes.

The banking trade association opposed the changes regarding loan maturities in whole, describing them as inconsistent with the credit union industry's specified mission of meeting the credit and savings needs of persons of modest means and arguing that they encourage unsafe lending practices. The Board disagrees. Rather, the Board finds that these amendments to the lending rule enhance an FCU's ability to meet the credit needs of its members. This rule allows FCUs to offer credit products that are more affordable to lower income members. Improvements in the quality and standards of construction of manufactured housing, for example, have resulted in increased values that may put the cost of shorter term loans out of the financial reach of individuals of modest means. The Board also disagrees that the longer maturities will encourage unsafe lending practices. To the contrary, as stated in the preamble to the proposed rule, NCUA encourages FCUs to take appropriate steps to ensure their liens are fully protected. Further, these changes to the regulation merely codify what OGC opinions have permitted for several years, and the Board is unaware of any evidence that the longer loan maturities have resulted in unsafe lending practices.

Two commenters raised issues revealing some confusion about the difference between mobile homes, which may have loan maturities up to 20 years, and manufactured homes, which are eligible for longer maturities. One FCU commented about a particular

state law and local practices regarding the titling of manufactured housing as real or personal property, ground-leasing, and what constitutes “permanently affixed,” which, the commenter contended, could cause confusion and result in risks to FCUs making manufactured housing loans. In part, some confusion may result if the terms manufactured home and mobile home have a different meaning under a state law. In reviewing the FCU’s letter, it became apparent that there may be issues under a state law that FCUs will need to address in their lending agreements with borrowers to ensure compliance with NCUA’s lending regulation. One trade association suggested clarifying that manufactured housing that is not permanently affixed to the land constitutes a mobile home. The Board notes that, while this will generally be correct because a mobile home does not have to be permanently affixed to land, which is required for a manufactured home loan, a mobile home still must meet certain regulatory criteria to qualify for a maturity of up to 20 years.

The regulation distinguishes between mobile homes and manufactured homes. First, in using the term “permanently affixed” to describe manufactured homes as a type of manufactured housing distinguished from mobile homes, the Board intends to limit long-term loans to manufactured homes that are intended to remain in place permanently. In its opinion letter on this topic, the OGC stated:

Most significantly, we note that a manufactured home, although constructed at a factory and not built on-site, is designed and intended to be permanently affixed to the land. Unlike a mobile home, which is also constructed at a factory, a manufactured home is not intended to be moved once it has reached its ultimate destination.

Legal Opinion OGC 03-0934, dated November 17, 2003. In order for a loan to qualify for the longer maturities of residential mortgage loans under §701.21(g), a manufactured home must be designed and intended to remain in place permanently.

The same FCU noted above also commented about two issues regarding manufactured home loans discussed in the preamble to the proposed rule. Regarding the statement in the preamble that a manufactured home must qualify as real property and be titled as real property, the FCU contends the requirement is unnecessary and that state law and local titling practices could cause problems. The Board notes that, for a loan to be eligible for a 30-year or more maturity term, the FCU Act requires that it be a “residential **real estate** loan.” 12 U.S.C. 1757(5)(A)(i) (emphasis added). Loans secured by some type of manufactured housing that is titled as personal property are not eligible for 30-year mortgages under the FCU Act but may be able to qualify as 20-year mobile home loans, assuming the criteria of §701.21(f) are met. To the extent that a particular state law raises questions of how an FCU can ensure its loans comply with NCUA’s lending regulation, an FCU may seek interpretive guidance from OGC.

Second, the FCU commented about the Board’s suggestion that, for safety and soundness reasons, FCUs engaging in long-term loans for manufactured homes under §701.21(g) should ensure, if the member is leasing the land where the manufactured home is located, that the term of the lease should be at least as long as the term of the loan. The FCU commented that this requirement is unnecessary and unreasonable, stating that, in practice, most manufactured housing communities permit leases of no

longer duration than six months. First, the Board notes its statement in the preamble is not a regulatory requirement but is a statement of guidance. Second, the FCU's reference to a local practice of having short term leases of six months or less is a practice associated with mobile home parks rather than manufactured home locations. A manufactured home, as opposed to a mobile home, is designed and intended to stay in place permanently rather than be moved. The Board's understanding is that, in purchases of manufactured homes, the manufactured home is most often located on land the borrower already owns or is purchasing in conjunction with the purchase of the manufactured home. As noted in the preamble for the proposed rule, as a matter of safety and soundness, an FCU making a manufactured home loan where the land is leased should ensure that the lease is as long as the term of the loan. There may be some rare set of circumstances that would support an FCU making a 30-year loan on a manufactured home located on property that is leased for some lesser period of time. However, where the lease on land is of such a short duration that it places the loan security at a high risk of loss or waste, safety and soundness considerations would weigh against making a 30-year or more loan.

For these reasons, the Board has determined to adopt the proposed rule as a final rule with no changes.

## **Regulatory Procedures**

### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The rule clarifies and expands the lending rules to incorporate recent OGC opinions. NCUA has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, NCUA has determined that a Regulatory Flexibility Analysis is not required.

#### Paperwork Reduction Act

NCUA has determined that the rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). NCUA currently has OMB clearance for §701.21's collection requirements (OMB No. 3133-0139).

#### Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This rule applies to only federally chartered credit unions. NCUA has determined that the final rule does not constitute a "significant regulatory action" for purposes of the Executive Order.



### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The rule applies only to federal credit unions. NCUA has determined that the amendments to the rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. NCUA submitted the rule to the Office of Management and Budget, which has determined that it is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

### **List of Subjects in 12 CFR part 701**

Credit unions, loans.

By the National Credit Union Administration Board on February 17, 2005.

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Mary Rupp

Secretary of the Board

Accordingly, the National Credit Union Administration amends 12 CFR part 701 as follows:

## **PART 701 – ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS**

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

2. Amend §701.21 by revising paragraphs (e), (f) and (g)(1) to read as follows:

### **§701.21 Loans to Members and Lines of Credit to Members.**

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(e) Insured, Guaranteed and Advance Commitment Loans. A loan secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the federal government, a state government or any agency of either, may be made for the maturity and under the terms and conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided.

(f) 20-Year Loans. (1) Notwithstanding the general 12-year maturity limit on loans to members, a federal credit union may make loans with maturities of up to 20 years in the case of:

- (i) a loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home, and the mobile home meets the requirements for the home mortgage interest deduction under the Internal Revenue Code,

- (ii) a second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and

- (iii) a loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

(2) For purposes of this paragraph (f), mobile home may include a recreational vehicle, house trailer or boat.

(g) Long-Term Mortgage Loans:

(1) Authority. A federal credit union may make residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph (g).

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